

United States District Court  
Southern District of Texas  
ENTERED

## UNITED STATES DISTRICT COURT

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Southern District of Texas  
FILED

AUG 13 2014

for the

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Southern District of Texas

David J. Bradley, Clerk of Court

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In the Matter of the Search of  
(Briefly describe the property to be searched  
or identify the person by name and address)Samsung S3 Cellular telephone,  
DEC# 256691488405269287

Case No.

B-14-751-MJ

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

Samsung S3 Cellular Telephone, DEC# 256691488405269287

located in the Southern District of Texas, there is now concealed (identify the person or describe the property to be seized):

Photographs, detailed records, including in-coming, out-going and missed call details, text message content, voice mail content. etc.) related to marijuana smuggling activities in violation of 22 USC 2778, 21 USC 841, 21 USC 846.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.


The search is related to a violation of:

Code Section	Offense Description
22 USC 2778	Control of arms exports and imports
21 USC 846	Conspiracy and Possession with Intent to Distribute a Controlled Substance
21 USC 841	Possession with Intent to Distribute a Controlled Substance

The application is based on these facts:

See Attachment A.

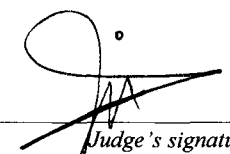
- ☒ Continued on the attached sheet.
- ☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

  
Applicant's signature  
Thomas J. Morrissey, HSI Special Agent  
Printed name and title

Sworn to before me and signed in my presence.

Date: August 13, 2014

City and state: Brownsville, Texas

  
Judge's signature  
Ignacio Torrey III, U.S. Magistrate Judge  
Printed name and title

**ATTACHMENT "A"**

**ATTACHMENT "A"**

IN THE MATTER OF THE SEARCH OF: Samsung S3 Cellular Telephone, DEC# 256691488405269287

CASE NUMBER: BV05PR14BV0003

Special Agent Thomas J. Morrisey of Homeland Security Investigations, who is currently assigned to the Office of the Assistant Special Agent in Charge, Brownsville, Texas, being of lawful age and duly sworn upon my oath, states as follows:

1. I am submitting this Affidavit in support of an application for a warrant to search and seize: Samsung S3 cellular telephone, DEC# 256691488405269287, in order to obtain information contained therein, including but not limited to photographs, detailed records, including in-coming, out-going and missed call details, text message content, and voice mail content.

2. I am a Special Agent with Homeland Security Investigations, and have been so employed for 13 years. I am a graduate of the Federal Law Enforcement Training Center, Glynco, Georgia, the most recent course attended being the combined Criminal Investigator Training Program and Customs Basic Enforcement School. I have over 20 years of combined law enforcement experience, in addition to a Bachelor's Degree in Sociology/Psychology. I also have hundreds of hours of continuing training related to my position as a Federal law enforcement officer.

3. During my career as a Special Agent of Homeland Security Investigations, I have participated in the execution of dozens of search warrants.

4. Because this affidavit is being submitted for the limited purpose of securing a warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the portable electronic devices described above is subject to search and seizure.

#### **Summary of Relevant Technology**

5. A cellular telephone or mobile telephone is a handheld wireless device used primarily for voice communication through radio signals. These telephones send signals through networks of transmitter/receivers called "cells," enabling communication with other cellular telephones or traditional "land line" telephones. A cellular telephone usually includes a "call log," which records the telephone number, date, and time of calls made to and from the phone.

6. In addition to enabling voice communications, cellular telephones now offer a broad range of capabilities. These capabilities include, but are not limited to: storing names and phone numbers in electronic "address books;" sending, receiving, and storing text messages and email; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Cellular telephones may also include global positioning system ("GPS") technology for determining the location of the device.

7. A smart phone, or Personal Digital Assistant (PDA), is a handheld electronic device used for storing data (such as names, addresses, appointments or notes) and utilizing computer programs. Some PDAs also function as a wireless communication device and are used to access the Internet and send and receive email. Smart phones usually include a memory card or other removable storage media for

storing data and a keyboard and/or touch screen for entering data. Removable storage media include various types of flash memory cards or miniature hard drives. This removable storage media can store any digital data. Most smart phones run computer software, giving them many of the same capabilities as personal computers. For example, smart phone users can work with word-processing documents, spreadsheets, and presentations. Smart phones may also include global positioning system ("GPS") technology for determining the location of the device.

**Summary of the Investigation Giving Rise to Probable Cause**

8. On July 24, 2014, Cameron County Sheriff's Office (CCSO) and Homeland Security Investigations, Brownsville, TX (HSI/Brownsville) located Miguel DIAZ Jr. DIAZ Jr. had an outstanding federal arrest warrant for a probation violation. CCSO transported DIAZ Jr. to the HSI/Brownsville office for positive identification. Special Agent (SA) Thomas J. Morrissey, HSI/Brownsville, confirmed DIAZ Jr.'s identity and the United States Marshals Service (USMS) arrived at HSI/Brownsville to take custody of DIAZ Jr.

During the processing of DIAZ Jr., SA Morrissey asked DIAZ Jr. biographical questions. SA Morrissey also asked DIAZ Jr. if he had any information concerning narcotics or weapons trafficking. DIAZ Jr. stated he did have information, but wanted something in writing that would allow him leniency or prevent him from going to jail. DIAZ Jr. also stated he had a lot of things going on at this time. SA Morrissey took this to mean that DIAZ Jr. knew about some sort of criminal activity. SA Morrissey told DIAZ Jr. that he would not be allowed to leave and that he could not make any promises to DIAZ Jr. about being released.

SA Morrissey asked DIAZ Jr. if he had a cellular telephone on his person. DIAZ Jr. produced a small Samsung flip cellular telephone. DIAZ Jr. gave SA Morrissey permission to search the Samsung cellular telephone. DIAZ Jr. even showed SA Morrissey a recent text showing that he was supposed to be meeting someone's boss in reference to picking up money and driving something in return. SA Morrissey

understood this to mean that DIAZ Jr. was supposed to meet with someone in reference to picking up and transporting something illegal.

During the processing, DIAZ Jr. later showed SA Christopher Mendoza, HSI/Brownsville, a second cellular telephone, Samsung S3 cellular telephone, DEC# 256691488405269287, which he had on his person and for which this application for a search warrant is being made. DIAZ Jr., showed SA Mendoza one picture of himself (DIAZ Jr.) holding what appeared to be an assault rifle, and one picture of himself (DIAZ Jr.) holding a bundle of marijuana. DIAZ Jr. stated he was showing SA Mendoza these pictures to make sure SA Mendoza knew that he was telling the truth about having stuff going on right now.

DIAZ Jr. was processed for the outstanding warrant and turned over to the USMS and CCSO for transportation and booking. SA Morrissey found out about the other cellular telephone and photographs when DIAZ Jr. was being turned over to the USMS and did not obtain consent to search Samsung S3 cellular telephone, DEC# 256691488405269287.

9. Based on my training and experience and discussion with other law enforcement officers, it is known that persons who smuggle and transport drugs and drug proceeds frequently use cell phones to maintain contact with associates during travel and also use cell phones to contact persons where the drugs and drug proceeds are destined. This frequently occurs due to the transient nature of these smuggling operations and because members of these conspiracies frequently travel and require coordination of their movements in order to pick up and drop off drugs and drug proceeds at designated times and places.

10. Based on my training and experience and discussion with other law enforcement officers, it is known that persons who smuggle and transport drugs and drug proceeds frequently take photographs of the drugs, weapons, vehicles, currency and other items purchased with the proceeds as trophy photographs to show how successful they have been. These trophy photographs may also show license

plates of vehicles, addresses of houses, and faces of individuals associated with the drug smuggling activities.

11. Based on my training and experience and discussion with other law enforcement officers, I know that in order to completely and accurately retrieve data maintained in cellular telephone and smart phone hardware or software, to ensure accuracy and completeness of such data, and to prevent the loss of the data either from accidental or intentional destruction, it is often necessary that the devices, related instructions in the form of manuals and notes, as well as the software utilized to operate such devices, be seized and subsequently processed by a qualified specialist in a laboratory setting.

12. Analyzing electronic handheld devices for criminal evidence is a highly technical process requiring expert skill and a properly controlled environment. Such devices utilize a vast array of different operating systems, software, and set-ups. The variety of hardware and software available requires even experts to specialize in some systems and applications. Thus it is difficult to know prior to the search which expert possesses sufficient specialized skill to best analyze the system and its data. No matter which system is used, however, data analysis protocols are exacting scientific procedures, designed to protect the integrity of the evidence and to recover even "hidden," erased, compressed, password-protected, or encrypted files. Since electronic evidence is extremely vulnerable to tampering or destruction (both from external sources or from destructive code embedded in the system as a "booby trap"), a controlled environment is essential to its complete and accurate analysis. Furthermore, there are often no software tools designed for forensic searches of particular handheld devices. Thus, searching for and retrieving data from a cellular telephone or PDA can be even more complicated than searching a computer, even if the device has a much smaller memory capacity than a computer. For

the foregoing reasons, the devices will be removed from the searched premises if the agent deems it necessary in order to conduct an efficient, complete, secure, and accurate search of the device.

#### **Analysis of Electronic Data**

13. Searching the devices for the evidence described above may require a range of data analysis techniques. In some cases, it is possible for agents to conduct carefully targeted searches that can locate evidence without requiring a time-consuming manual search through unrelated materials that may be commingled with criminal evidence. For example, agents may be able to execute a "keyword" search that searches through the files stored in a computer for special words that are likely to appear only in the materials covered by a warrant. Similarly, agents may be able to locate the materials covered in the warrant by looking for particular directory or file names. In other cases, however, such techniques may not yield the evidence described in the warrant. Criminals can mislabel or hide files and directories; encode communications to avoid using key words; attempt to delete files to evade detection; or take other steps designed to frustrate law enforcement searches for information. These steps may require agents to conduct more extensive searches, such as scanning areas of the device's memory not allocated to listed files, or opening every file and scanning its contents briefly to determine whether it falls within the scope of the warrant. In light of these difficulties, your affiant requests permission to use whatever data analysis techniques appear necessary to locate and retrieve the evidence described above.

**Conclusion**

14. For the forgoing reasons, SA Thomas J. Morrissey has reason to believe that Samsung S3 cellular telephone, DEC# 256691488405269287 was used in connection with and contains evidence of criminal activity.

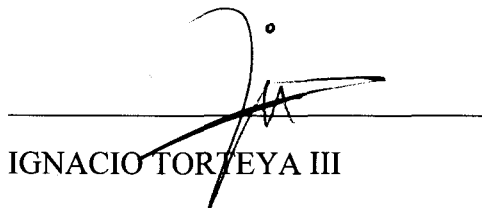
A handwritten signature in black ink, appearing to read 'Thomas J. Morrissey', written over a horizontal line.

Thomas J. Morrissey

Special Agent

Homeland Security Investigations

Signed and sworn to before me by Thomas J. Morrissey on this the 13<sup>th</sup> day of August, 2014.

A handwritten signature in black ink, appearing to read 'Ignacio Torteya III', written over a horizontal line.

IGNACIO TORTEYA III

UNITED STATES MAGISTRATE JUDGE

SOUTHERN DISTRICT OF TEXAS